

# Can State Review of Local Planning Increase Housing Production?

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## *Abstract*

To increase housing production and make the distribution of affordable housing more equitable, several states subject local land use planning to review by state agencies or courts. Focusing an empirical analysis on California, this article considers the potential efficacy of these reviews in contributing to the overall supply of housing. Past studies of other inter-governmental mandates suggest that their institutional design helps determine their success.

A comparison of four states indicates that approaches differ considerably in how they determine local housing needs, evaluate local efforts prospectively or retrospectively, and penalize noncompliance. California's housing element law, which mandates prospective local planning for quantifiable housing goals, gives state staff the power to review local plans for compliance with statutory requirements. However, multivariate analysis indicates that the compliance status of California municipalities in 1994 did not predict the number of single-family or multifamily housing permits issued from 1994 to 2000.

**Keywords:** Affordability; Housing policy; State and local governments

## **Introduction**

Policy makers have expressed great concern in recent years over insufficient housing production, particularly in certain states and metropolitan areas with serious affordability problems. A frequently raised concern is that housing development, particularly affordable units, is hindered by local government obstacles, including excessively stringent zoning or subdivision regulations, growth controls, environmental reviews, and NIMBY-type ("not in my backyard") political pressures.

This article examines policies that subject local land use planning to state review in order to increase housing production and make the distribution of affordable housing more equitable. First, I briefly summarize the origins of state and regional fair share housing policies as civil rights-oriented measures in the 1970s and their more recent metamorphosis in some states into efforts to increase the overall supply of housing to improve affordability. Next, I review previous literature that seeks to evaluate the effectiveness of planning in general and state planning mandates in particular, noting the importance of the design of intergovernmental planning relationships. In light of the key role ascribed to institutional design, I describe the basic features of state-level review of local housing performance in four states where concerns over residential production and affordability have been expressed.

A more intense empirical examination of one state, California, follows. Its housing element law calls on state housing department staff to review local plans to determine whether they comply with detailed requirements in the state statute. The law requires localities to identify enough land sites for housing and to reduce government constraints on residential development. Although many housing scholars are familiar with the basic provisions of the California law, its impact on housing production has not been subjected to scrutiny.

I use multivariate analysis to discern whether municipalities' compliance or noncompliance with the state requirement is a significant predictor of their subsequent housing production, with special attention paid to multifamily units. A concluding section discusses some of the possible merits and deficiencies of California's prospective, planning-oriented oversight compared with other potential approaches to state review.

### **Local growth policies and housing production: The motivation for state review**

The initial impetus for legislation that introduced state review of local housing plans can be traced to the late 1960s and early 1970s and to a concern with fair housing and spatial segregation of the poor. By that time, a generation after federally subsidized housing programs and urban renewal policies had been introduced, it had become clear that a disproportionate share of subsidized units, and indeed of low-cost housing more generally, was concentrated in the central cities (Jackson 1985). The concern of social scientists and activists with opening up the suburbs to the poor and minorities, in combination with the peak activity of federal housing subsidy programs during the first term of Nixon's presidency, led to an interest in exerting leverage over suburban municipalities (and, in some areas, counties) that were seen as overtly or

covertly excluding low-cost housing through strict zoning and subdivision regulations (Danielson 1976; Downs 1973).

Although this concern with the spatial dispersion of affordable housing persists, the gradual reduction of overt discrimination in the housing market (or at least its metamorphosis into more hidden forms) has decreased the civil rights flavor of state housing oversight. During the succeeding period (1970s through 2000), however, housing cost inflation continued to pose affordability challenges for the poor and made homeownership in some high-cost regions a major challenge even for the middle class. Social scientists and home builders, meanwhile, began to call attention to the variety of methods local governments used to place regulatory burdens on housing development, not only through traditional zoning, which the courts had steadily upheld, but through an expanding number of growth control and growth management devices that were alleged to make home building a lengthier and more expensive process (Dowall 1984; Frieden 1979; U.S. Department of Housing and Urban Development 1991).

More recent studies note that determining the degree to which local growth policies constrain housing markets is an analytical challenge. As Knaap (1998) shows, such studies typically use prices (often only for single-family detached homes) as barometers of housing market changes, paying less attention to changes in housing production in general and to production for various income segments in particular. Despite increasingly sophisticated methodologies (Glickfeld and Levine 1992; Landis 1992; Landis, Deng, and Reilly 2002; Malpezzi 2002; Pendall 2000; Quigley and Raphael 2004), scholars have come to mixed and sometimes conflicting conclusions about the effects of local growth management and growth controls on housing markets.<sup>1</sup> Nevertheless, according to Knaap (1998), the preponderance of evidence suggests that local (and regional) land market interventions are associated with price increases. Nelson et al. (2002) point out that market demand is still the main driver of housing prices, but suggest a key role for state oversight in overcoming the “parochialism” of local land use policies, arguing that “if left to their own devices ... local governments will often avoid affirmative measures” (36) to aid affordability.

<sup>1</sup> Reasons for such conflicting findings include the difficulty of sorting out the effects of local policy and planning from other factors, the differential effects of policies on land as opposed to buildings, the amenities and benefits that local growth controls may add, the existence of housing submarkets, and the endogeneity between growth controls on the one hand and population density and growth on the other (Knaap 1998).

In short, the criticism of local (particularly suburban) governments has shifted from the fair housing claims of the civil rights era to complaints about regulatory excess. In this context, policy makers in some states with high housing costs have turned to existing state statutes—those initially intended to deconcentrate subsidized housing and reduce suburban exclusion of minorities—as a tool that could also be used to influence localities to approve more housing construction in general. Affordable units were still of particular, but no longer exclusive, concern to state legislators and activists. The obvious question then becomes, Are requirements for state review of local planning and land use policies effective in helping to produce more housing units than would otherwise occur?

### **Considering the effects of plans and state mandates**

This question relates to a broader concern in the planning literature over whether planning—particularly local planning as mandated by state governments—is effective in attaining its professed goals. Knaap, Hopkins, and Donaghy (1998) note that research on planning effectiveness has generally followed one of two approaches: examining the congruence of land use outcomes with earlier plans or assessing the quality of plans against some deductively derived standard.

Considering the degree to which state *housing*-planning mandates, in particular, matter is less common. Although the literature has provided a description of the housing mandates of various states and of the political and legal processes by which they were adopted, research on the urban development effects of such mandates has been less sustained. Something of an exception is the recent analysis of housing affordability under the Oregon growth management regime (Nelson et al. 2002; see also Lang and Hornburg 1997). Other relevant research examines Florida: Connerly and Muller (1993) evaluate the quality of its state-mandated local housing plans in terms of such aspects as vision, comprehensiveness, and specificity, but do not study actual housing outcomes. It is interesting to note that two quantitative studies have found that the implementation of Florida's comprehensive planning mandate had the unintended effect of reducing the production of housing (Feiock 1994) and making it less affordable (Anthony 2003). However, it is important to note that Florida's Growth Management Act was motivated primarily by environmental concerns, natural hazards, and issues of adequate infrastructure for new development, rather than by concerns over housing production. Anthony (2003) found anecdotal evidence that Florida's Department of Community

Affairs chose to downplay its evaluation of the housing affordability aspects of the state mandate in its reviews of local plans.

In many cases, a problem for researchers has been the lack of a relevant control group of jurisdictions against which to test the effects of state requirements. That is, a state either has a mandate for local governments to plan for housing or it does not. Comparing the state (or its metropolitan areas) with others that do not have such mandates raises the question of whether the state that passed the mandate has unique features that contribute to its housing-market experience. Moreover, data limitations restrict the number of states that might be compared and thus the opportunity to control for such characteristics. The variability of the quality of local implementation and of state review efforts can also render such comparisons difficult (Deyle and Smith 1998).

Another approach is to compare a state with itself by looking at housing trends before and after the mandate was passed. Unfortunately, many other temporal forces that might change housing production or prices (as well as lags in the implementation of the mandate and the response to it) are also at work, thus limiting the ability to attribute changes in the housing market to the particular policy shift.<sup>2</sup>

Burby, May, and colleagues take yet a different approach to evaluating mandates, although their focus is on local implementation of state requirements to plan for disasters and natural hazards (Burby and May 1997; Burby and Paterson 1993; May and Burby 1996). In examining the relative success that states experience in getting localities to implement intergovernmental mandates, May and Burby (1996) find that the design of the mandate matters in their studies of programs in Florida and New South Wales, Australia. Where state policy goals conflict with local interests and proclivities, a coercive policy (a “stick”) with a significant possibility of sanctions tends to achieve greater local compliance. However, if local officials are sympathetic to the state goal, then cooperative or collaborative approaches that provide assistance and rewards for localities (“carrots”) show more promise, especially for potentially high-performing jurisdictions. Whereas a stick (as in Florida) is likely to result in greater and more uniform *procedural* compliance, it may limit the creativity and ultimately the quality of local planning and alienate committed jurisdictions; the carrot (as in New South Wales) may achieve greater *substantive*

<sup>2</sup> Feiock (1994) bypasses this problem by examining changes in housing production in Florida localities as a function of the pace by which they implemented the state’s comprehensive planning law.

compliance and quality of plans, but allows recalcitrant jurisdictions to drag their feet and avoid implementation.

The Burby-May studies are valuable in illustrating how the institutional arrangements of intergovernmental planning mandates can structure local government behavior and, ultimately, the effectiveness of local plans. However, the mandates these studies evaluate emphasized natural hazards and building codes: in short, policies that pursue regulations to limit unsafe building. By contrast, the housing mandates of interest here are focused more on *easing* barriers to construction by reducing unnecessary regulation and supporting private and nonprofit home building through zoning changes, subsidy programs, and the like. In this arena, the institutional features of interest in the state mandate may be different. Varady (1996) notes, “America’s record in local housing planning over the past 20 years has been mixed at best” (253), suggesting that U.S. policy makers should place more emphasis on implementation and strategy in local housing plans, as best-practice British plans have increasingly done. Overall, however, state mandates have lacked rigorous evaluation of their effects on residential production and affordability.

### **Varying approaches to state review**

California’s approach is perhaps the best-known and most broad-ranging effort to use and elaborate on an early fair share housing policy to address concerns over housing production, and I will focus on it in greater detail later. However, at least three other states have fair share policies that date to the late 1960s or early 1970s and have been adapted to newer realities. In each of these states, housing has been perceived as increasingly expensive and scarce, and policy makers have sought ways to use these older policies to enhance production. In seeking this goal, each state employs a somewhat different mix of policy tools, sanctions, and reviews.

In Massachusetts, the Comprehensive Permit Law of 1969 (commonly referred to as 40B because of its location in the legal code) was enacted as an attack on “snob zoning” (Citizens Housing and Planning Association 2001; Flint 2002; Listokin 1976; Massachusetts Department of Housing and Community Development n.d.). Its major thrust is to radically simplify and expedite the review process for developers seeking to build residential projects in which at least 25 percent of the units have affordability restrictions. The legislation also created a statewide Housing Appeals Committee that can overturn local denials or conditions and order a project to be permitted, although appeals are allowed only if the locality has less than 10 percent of its housing units in subsidized projects. Most such appeals apparently are granted (Bollens

1994). In recent years, there has been a pronounced increase in the number of projects proposed under the law, in part as a means of overcoming what are seen as regulatory bottlenecks in housing development more generally. “Because many towns have put the brakes on all growth and buildable land is scarce, developers say going the 40-B route—generally large, dense projects that are 25 percent affordable under state guidelines—is the only way to do business these days” (Flint 2002, B1). However, I could find no rigorous empirical analysis of the effects of the Massachusetts law on housing production or prices.

In New Jersey, the well-known *Mount Laurel* state supreme court decisions handed down in the 1970s initially focused on equalizing spatial housing opportunities for low-income and minority households (Calavita, Grimes, and Mallach 1997; Haar 1996; Hughes and VanDoren 1990; Listokin 1976; Weinstein 1993). But as implemented since the 1980s, the *Mount Laurel* approach, overseen by a state Council on Affordable Housing, has morphed into an ongoing effort to increase the production of affordable housing, with spatial dispersion goals somewhat de-emphasized. The major mechanism for new construction is the so-called builder’s remedy, under which a developer offers to construct affordable units that help meet a community’s assigned obligation for such units. The concession the developer gets in return is typically a density bonus allowing more market-rate units than would otherwise be allowed under local zoning. These so-called inclusionary housing projects ordinarily consist of 80 percent market-rate and 20 percent low- and moderate-income units.<sup>3</sup>

In Oregon, a voluntary fair share plan crafted for the Portland region in the late 1970s was adapted into a state planning system that preempts some local zoning discretion in residential areas with the goal of ensuring adequate housing production (Hammond 2002; Knaap and Nelson 1992; Lewis 1996; Toulan 1994). In the mid-1970s, the area’s regional government, the Metropolitan Service District (now called Metro), enacted an Areawide Housing Opportunity Plan to distribute federal housing subsidies on the basis of local needs. Although this approach withered when federal housing funds decreased in the early 1980s, Oregon’s Land Conservation and Development Commission, charged with overseeing state land planning, adopted the broad

<sup>3</sup> Although New Jersey is the best-known user of the builder’s remedy, neighboring Pennsylvania allows builders of fully market-rate, not just inclusionary, projects to sue under the builder’s remedy. Mitchell (2004) finds evidence that housing development has been more diverse in type in the Pennsylvania portions than in the New Jersey portions of the Philadelphia metropolitan area.

outlines of the Metro plan as its own regulation, and it was later codified into state law by the legislature. This Metropolitan Housing Rule, which applies only to the Portland region, prescribes that local government plans must allow at least 50 percent of new residential units to be multifamily or attached. It also specifies the minimum zoning densities per buildable acre that localities must allow. In combination with the region's urban growth boundary and continued growth pressures, the rule probably helps account for the notable increases in density that have occurred in the Portland region. Upward pressure on housing prices resulting from the limit on developable land under the growth-boundary policy is moderated by the streamlining and density-increasing efforts of the housing rule (Nelson et al. 2002). One of Oregon's statewide planning goals also requires local governments to allow "a variety of housing types and [to] plan to meet projected housing needs" (Bollens 1994, 184–85).

### **The development of California's housing element law**

In 1969, Pete Wilson, then a member of the California Assembly, introduced a bill that was ultimately signed into law and that required all municipalities and counties to include a "housing element" as part of their local general plan. (The account in this section draws on California Department of Housing and Community Development [CDHCD] 1988, n.d.; California Senate Committee on Housing and Land Use 1995; California Senate Committee on Local Government 1993; California Senate Select Committee on Housing and Urban Affairs 1974; Fulton 1999; and Richards, Watson, and Gershon 1998a, 1998b). Previously, although the state required all localities to write general plans, the only mandatory elements (topics) were land use and transportation. In 1971, legislation requiring that localities follow CDHCD guidelines in preparing housing elements was added.

Subsequent clarifying legislation in 1980 and in later years prescribed that although CDHCD guidelines are advisory, localities must consider the state's review before adopting a local housing plan. The legislation mandated that communities take planning responsibility not only for their current population, but also for "those households who might reasonably be expected to live within the jurisdiction were a variety and choice of housing appropriate to their needs available" (CDHCD 1988, 1). Under the regional housing needs allocation process developed by the state, CDHCD works from a statewide assessment of total housing needs for a five-year period and assigns housing goals or allocations to each metropolitan region. Regional councils of governments (COGs) then prepare a housing needs assessment and devise a formula or other mechanism to distribute the allocations to each city and unincorpo-

rated county area in their region. The allocation includes specified goals for new housing units for households with very low, low, moderate, and “above-moderate” incomes.

In theory, local housing allocations should sum up to the regional allocation for each income bracket, and the regional totals should in turn sum up to the statewide need. Moreover, planners are directed to avoid aggravating existing concentrations of low-income households. The allocation and planning process is to be repeated every five years, although the mandate was suspended from 1992 through 1998 because of state and local budget shortfalls.

CDHCD staff review both the regional housing plans and each city and county housing element on a staggered timetable. Staff then determine whether local plans comply with all provisions of what has become a very detailed statute (Curtin 2000). For example, every local plan must estimate and provide for the special housing needs of farm workers, account for subsidized units whose affordability covenants are expiring, and provide a detailed land inventory that demonstrates how local zoning and land use plans will enable the building of a specified number of units for different income levels over the five-year period. The locality’s action plan must identify enough potential sites for future housing development to accommodate the community’s need “by right”—that is, without imposing conditions on prospective home builders.

This process has led to tensions among localities, their COGs, and CDHCD. In the past two rounds of updates, which took place in the early 1990s and then from 1999 to 2003, several news articles quoted local officials as arguing that the number of housing units allocated to their communities was unrealistically high and that CDHCD reviewers in Sacramento might not understand local conditions. Local governments also maintain that the housing mandate conflicts with other state policies and rules on environmental impact review, coastal protection, seismic safety, and preservation of farmland, as well as new laws geared to ensuring a sufficient water supply before new developments can be permitted (Carrigg 2002). Such laws, it is argued, militate against densification of housing in certain areas. Some older communities have further made the case that the lack of vacant land prevents them from successfully providing a large enough inventory of land sites. CDHCD counters that upzoning, the changing of industrial and commercial zones to residential zones, and the creative use of redevelopment policy would allow these communities to fulfill their obligations, particularly if they were more flexible about parking, setback, and other requirements.

In the judgment of CDHCD staff, a large majority of communities across the state were not in compliance with the housing element statute in the early 1990s. However, a concerted effort, including warning letters to local govern-

ments from the state attorney general, succeeded in improving compliance rates by the middle of the decade. As of 2004, about one-third of municipalities and one-quarter of counties were noncompliant.

To date, there have been two potential penalties for noncompliant jurisdictions. First, they do not qualify for certain categories of state and federal housing assistance, including most Community Development Block Grants. Second, parties with standing (generally, nonprofit builders denied approval for a subsidized project) can sue the locality, arguing that its noncompliant housing element renders its entire general plan invalid. In rare cases, judicial orders have shut down all local permitting, including commercial, industrial, and residential projects, until the locality rewrites the housing element to the judge's satisfaction. Thus, overall, "California has used the judicial system to enforce its planning legislation" (Burby and May 1997, 29).

Since 2001, several bills have been introduced in the state legislature to increase penalties or sanctions—such as fines or reductions in state aid—for localities found noncompliant by CDHCD, although none has yet been signed into law. Such increases in sanctions would represent something of a sea change in that to this point, CDHCD comments on local housing elements have remained officially only advisory.

### **Comparing the California approach with that of other states**

Table 1 compares the most salient aspects of the state review systems discussed earlier. An important point of comparison is whether the approach to local housing policy is *prospective* or *retrospective*. In the former, the emphasis is on creating the conditions necessary for balanced *future* local housing production by means of thorough planning and regulatory streamlining. In the latter, review is triggered when a locality has not achieved a *current* housing stock with certain affordability standards. New Jersey has elements of both prospective and retrospective evaluation.

The two states with retrospective evaluation (Massachusetts and New Jersey) use builder appeals or lawsuits to trigger state review, and the remedies thus imposed can lead to measurable increases in housing units, in that these are units that localities otherwise would have rejected. In the primarily prospective systems (California and Oregon), however, it is difficult to identify projects or numbers of units that would not have been built in the absence of state reviews of local planning. It is this concern with measuring the effects of prospective, planning-oriented state review systems that motivated the empirical analysis of the housing production of California cities reported here.

**Table 1.** Comparison of State Review Systems

	California	Massachusetts	New Jersey	Oregon (Portland region)
Statewide review entity	Executive agency (CDHCD).	Appeals board (Housing Appeals Committee).	Quasi-judicial agency (Council on Affordable Housing).	Quasi-judicial commission (Land Conservation and Development Commission).
Determination of local fair share	Elaborate regional needs determination process involving the state, COGs, and localities.	At least 10 percent of local housing units are in subsidized projects, or such units constitute 1.5 percent of the land area zoned for residential, industrial, or commercial uses	Elaborate state-directed housing needs determination process.	No specific number of units is allocated.
Enforcement mechanism	CDHCD review of local compliance with state statutes on housing planning. Occasional lawsuits, mainly by nonprofit builders.	Appeal by a nonprofit builder of a local decision to the Housing Appeals Committee if the locality has not met its fair share.	Appeal by a commercial or nonprofit builder to the state courts if the locality has not met its fair share.	State law prescribes minimum zoning densities and 50 percent attached housing in residential zones.
Typical penalty	CDHCD noncertification triggers denial of Community Development Block Grant and other federal and state housing funds. More rarely, court-imposed development moratoriums and plan rewrites result from lawsuits.	The locality is ordered to permit the subsidized housing project. (The settlement is often negotiated.)	The "builder's remedy" is imposed by the court (or in settlement), with a 20 percent density bonus for affordable units in mixed-income projects.	There is the potential for denial of certain state subdivisions or a lawsuit from private intervenors: In practice, virtually all localities now comply.
Types of housing of state interest	All: very low, low, moderate, and above moderate.	Subsidized units.	Low- and moderate-income housing.	Localities must plan for all housing. There is an implicit focus on attached housing.
Orientation regarding housing production	Prospective: broad planning for accommodating future housing needs across all income brackets.	Retrospective: Does the locality currently have enough affordable housing?	Both prospective (plan for future needs) and retrospective (repair current deficiencies with the builder's remedy).	Prospective: Local land use regulation must allow for dense and attached housing.

A full survey of all states is beyond the scope of this article. The available evidence, which is hardly systematic, suggests that the California, Massachusetts, New Jersey, and Oregon approaches have been unusually hands-on and that most other states have few provisions for a systematic review of local housing and land use plans, although Florida, as noted earlier, includes a housing element requirement as part of its Growth Management and Land Development Act.<sup>4</sup> Statewide planning efforts and growth management regimes in other states (such as Maryland and Vermont) have rarely been tied to local affordability or housing production goals. In fact, the smart growth movement has been criticized for focusing on protecting the environment and reducing sprawl at the expense of affordability, although more recently there has been some rapprochement between smart growth organizations and equity activists (Bollens 2003; National Low Income Housing Coalition 2001).

### **Testing the California approach: Compliance and housing production**

The general philosophy behind state policies that require a review of local housing planning appears to be essentially threefold:

1. Local governments are assumed to resist residential development, especially affordable and multifamily development.
2. State planning requirements, in combination with state oversight and/or sanctions, are assumed to be able to influence local regulatory and permitting behavior to support more balanced land-use policies.
3. Such policies will ensure that more housing gets developed and affordability goals are thereby advanced.

Note that each of these three assumptions involves some uncertainties. If conditions are not met, the expected relationship between housing production and local compliance with state rules may not hold.

In this part of the article, then, I examine California's housing element law in relation to variations in local housing production. Given its cutting-edge reputation for growth management and development regulations, California is

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<sup>4</sup>In some states, the momentum that created the initial generation of fair share plans faded away and has not been supplanted or supplemented by an emphasis on overall production. See, for example, Goetz, Chapple, and Lukermann (2003) for a strong indictment of the implementation of Minnesota's fair share housing policy in the Twin Cities region during the 1980s and 1990s.

a particularly interesting laboratory for analysis (Landis, Deng, and Reilly 2002). Also, unlike the case in some other states where the nature of the mandate makes it very difficult to sort out the effects of state review on local housing markets, CDHCD explicitly identifies localities as complying or not complying with requirements. This determination sets up a straightforward empirical test: Do local governments that in the eyes of the state comply with the housing element law by adequately planning for future residential needs enable more housing to be built? Using data from the 1990s, I conduct a statistical analysis of whether a municipality's compliance status in 1994, after a round of state-required plan updates, helps predict the increase in the city's housing stock by 2000. Although data to specifically study the development of affordable units are not available, it is possible to examine the growth of multi-family housing.

The analysis focuses exclusively on municipalities (cities), not counties, for both substantive and practical reasons. Substantively, over 90 percent of the state's population and a similar proportion of its population growth are in incorporated cities. Methodologically, the small number of counties in California (58) hinders multivariate analysis. Moreover, county housing elements pertain only to land in unincorporated areas, which do not match census and other data on the characteristics of counties.

#### *Housing element compliance circa 1994*

To make this analysis possible, I used the CDHCD (1994) housing element compliance report to the state legislature for 1993, which actually reported the compliance status of cities and counties as of July 1994. This period was chosen because cities in all regions of the state had completed their second round of housing element updates and had received CDHCD's judgment on whether their plans were compliant. After extremely low initial compliance rates in the early 1990s, CDHCD and the state attorney general applied pressure to noncompliant jurisdictions to revise their plans in accordance with the statute. This tactic was fairly successful, and by 1994, about half (45 percent) of cities statewide were in compliance. Still, according to CDHCD, a larger percentage of cities remained noncompliant (48 percent), either because of housing elements deemed to be at odds with the statute or because no revision had been submitted at all. The remaining cities either had housing elements actively under CDHCD review or consisted of newly incorporated communities that had not yet submitted plans.

### *Measuring housing growth*

The main issue of interest in the multivariate analysis is whether there is a connection between a city's compliance status as of 1994 and the amount of housing growth it experienced throughout the rest of the decade. For the dependent variable in the analysis, I measure housing growth by using a commercial database from the Construction Industry Research Board (CIRB), which tabulates new permits issued by each jurisdiction. Because this variable is skewed (due to the presence of a small number of large cities with very high numbers of new housing units), it is expressed in logarithmic form.

It would be preferable to examine the number of units actually built, rather than permits issued. Unfortunately, no comparable construction data are available across municipalities. In practice, however, this concern is not terribly problematic. In California, receiving a permit is the final stage of "entitling" proposed developments in a lengthy approval process (CDHCD 2000). Granting permits represents the culminating policy choice by the local government to allow the builder to add a new housing unit, and local policy is what the housing element law is designed to influence.<sup>5</sup>

Moreover, unlike the U.S. census count of housing units in municipalities, which is compiled for decennial years only, CIRB data are released annually, allowing an analysis of the 1994–2000 period.<sup>6</sup> These data have the additional benefit of being disaggregated by single-family or multifamily units. To address any concerns about the reliability of the data, the CIRB count of total new residential permits in each city for the entire decade of the 1990s was compared with the change in the number of housing units according to the 1990 and 2000 censuses. Correlations between CIRB and census measures were extremely high ( $r = 0.97$ ), even when the two cities with more than a million residents (Los Angeles and San Diego) and the 10 cities with less than 2,500 residents were dropped from the comparison ( $r = 0.94$ ).

Because the unique characteristics of very large and very small cities may hinder the analysis, these 12 communities are excluded from the regression. (In any event, some census data for cities with less than 2,500 residents are not

<sup>5</sup> The state supreme court has held that if a property owner has "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit" (cited in Curtin 2000, 177).

<sup>6</sup> In a separate analysis not reported here, I examined the percentage change in housing units in each city between 1990 and 2000 by using the census count of housing units and the 1991 housing element compliance status, rather than the 1994 status used in the present analysis. Results were similar to those reported here.

available.) Among the remaining group of 405 California municipalities, the average number of new units permitted in the 1994–2000 period was 1,334, according to CIRB, although the median increase was only 486 (the difference is due to some high-growth outliers). Every city in the group had at least one single-family permit issued, but 54 (13 percent) issued no multifamily permits. To avoid losing these zero-permit cities from the analysis of multifamily production, I added 1 to the number of permits before taking the natural log.

### *Controlling for other factors*

Of course, there are many reasons, beyond the local policies and planning practices presumably reflected in compliance status, why housing growth could be expected to differ among communities. This analysis follows the typical approach in the literature of examining the association between local policy variables (in this case, housing element noncompliance) and changes in local housing or population characteristics (in this case, new housing permits) while controlling for an extensive set of community characteristics that may be likely to influence the level and type of growth. For example, studies such as those by Baldassare and Protash (1982) and Logan and Zhou (1989) typically control for initial local population size and density in addition to employing one or more measures of local socioeconomic status. They also control for certain urban ecological characteristics (such as the accessibility of the community to jobs, the age of the city, or residential stability), as well as community racial/ethnic makeup. Others take a more parsimonious approach. For example, Levine (1999), who also examines housing-unit change in California localities, controls only for initial city size (number of housing units) and density.

Out of concern that the latter approach may lead to omitted-variable bias, I include a larger array of measures of city characteristics as regressors in a multivariate model. Except as noted, variables are derived or calculated from the 1990 census. The variables I include measure the city's growth trajectory before the period in question, its existing growth characteristics and position in the metropolitan hierarchy, its demographic characteristics, and its level of local government fiscal effort, as well as a county indicator variable. I will briefly discuss each of these sets of variables in turn.

*Growth trajectory.* First, it is important to assess the existing trend in housing growth in the city before the 1994–2000 period. Communities in urban regions often persist in their tendency to differentiate themselves (Farley 1964; Neiman 1980). I anticipate that fast-growing cities will continue to add new units at a rapid rate, whereas more mature communities may add them at a slower rate. The variables related to these concepts in the model are the

percentage increase in total housing units in the city between 1980 and 1990 (relying on census counts of units) and the age of the median housing unit in the community.

*Existing growth characteristics.* Second, I consider factors that likely affect a community's capacity to accommodate additional housing units and the likelihood of its happening. Here, the variables are the population of the city in 1990, its population density, and an indicator that denotes whether the city is located in a census-identified urbanized area. Denser communities and those in urbanized areas may find it more challenging to accommodate new housing because of a shortage of vacant land or conflicts with existing land uses and residents worried about congestion effects. Another variable, the ratio of jobs within the city to workers living there, captures the presence of job centers—cities that might be expected to attract more interest from home buyers and developers. (The jobs data are calculated from the Census Transportation Planning Package.) Average commuting time measures the accessibility of the city to jobs. Finally, a measure of the percentage of housing units in the city that are used for seasonal or recreational purposes captures another important specialization of some localities, which serve as meccas for vacation homes.

*Demographic characteristics.* A third set of controls accounts for important local demographic and economic characteristics expected to affect housing development. These include measures of the percentage of non-Hispanic whites in the city population and the median income (and income squared) of households in the city.<sup>7</sup> While better-off communities may well be more attractive to households and developers than poor communities, it is also often the case that very high income jurisdictions have high land costs that may dampen development. Residents of wealthy cities are also likely to have more political resources to mobilize in opposition to growth (although evidence on the relationship between community status and growth control policy is mixed: Donovan and Neiman 1992; Logan and Zhou 1990). Another control is the percentage of residents aged 65 and over (since seniors often tend to have lower rates of household formation). Following Malpezzi (2002), who suggests that housing markets may behave differently in high-technology

<sup>7</sup> The measures of socioeconomic status were chosen, in part, to minimize concerns over multicollinearity. Variables such as unemployment rate, poverty rate, and homeownership are closely associated with median income, but do not show as much association with housing growth. The racial variable (percentage non-Hispanic white) is only moderately correlated with the median income variable ( $r = 0.32$ ).

areas, I also include a measure of the percentage of the local (working) population employed in technical occupations. Although high-technology industries helped spur California's growth in recent decades, it is also true that aerospace—a high-technology industry—saw large employment losses during the 1990s, particularly in the Los Angeles area.

*Local government fiscal effort.* Fourth, the fiscal capacity of municipalities may help explain local land use decision making, including decisions related to housing. Cities with strained tax bases may be less likely to approve new housing development than cities with more fiscal resources. The variable used here is a measure of fiscal effort: the ratio of municipal general revenues to the aggregate personal income of the city's residents (Wolman 1996). The source for the data on city revenues is the California state controller (1995).

*County.* Finally, one way to take account of an area's housing market characteristics, which otherwise might be difficult to measure, is to include a control for the county in which each city is located. I follow this approach and include county-level fixed effects. Thus, such factors as the county's population growth trend, its location in the path of growth, county government policies, and other unobserved countywide factors are taken into account. These county location variables prove to be important controls; by themselves, they account for 23 percent of the variation in total housing permits, 26 percent of the variation in single-family permits, and 9 percent of the variation in multi-family permits across these cities.

*Compliance.* The major variable of interest, of course, is whether, according to CDHCD's July 1994 tally, the city was found to be in compliance with the housing element statute. This is an indicator variable, with compliant cities set to equal 0. Those found noncompliant and those that failed to update their housing elements are set to equal 1.<sup>8</sup>

#### *Results of the analysis of variations in housing permits issued*

The regression model accounts for 71 percent of the variation in total housing-unit permits issued across cities between 1994 and 2000 (table 2,

<sup>8</sup> Several other city characteristics were tested in various versions of the model. These included measures such as the vacancy rate, the percentage of housing units not connected to sewers, and the average number of persons per household in the city, as well as controls for central-city or rural status. These measures were dropped when they proved persistently unrelated to the number of new housing permits in the city. Including these variables does not alter the results for the compliance status variable discussed later.

**Table 2.** Regression Models: Number of Housing Permits Issued in California Municipalities

	Total Permits (log)	Single-Family Permits (log)	Multifamily Permits (log)
Housing element is noncompliant (dummy)	0.065 (0.120)	0.098 (0.126)	-0.233 (0.215)
Percent housing growth in 1980s	0.004 (0.002)*	0.004 (0.002)**	0.001 (0.003)
Age of median housing unit (years)	-0.046 (0.010)***	-0.042 (0.011)***	-0.051 (0.016)***
Population size (log)	1.047 (0.064)***	1.075 (0.079)***	1.235 (0.113)***
Population density (log)	-0.176 (0.138)	-0.325 (0.162)**	-0.056 (0.230)
City is urbanized (dummy)	-0.411 (0.248)*	-0.420 (0.252)*	-0.297 (0.434)
Job/Worker ratio (log)	0.350 (0.153)**	0.225 (0.162)	0.481 (0.285)*
Percentage of housing units for recreational use	0.020 (0.013)	0.012 (0.012)	0.013 (0.034)
Average commuting time (minutes)	0.002 (0.022)	0.002 (0.022)	-0.023 (0.040)
Percentage of residents who are non-Hispanic whites	0.005 (0.004)	0.006 (0.005)	-0.003 (0.008)
Median household income	0.000 (0.000)	0.000 (0.000)**	0.000 (0.000)*
Median household income squared	-0.000 (0.000)*	-0.000 (0.000)**	-0.000 (0.000)***
Percentage of senior citizens	-0.007 (0.015)	-0.007 (0.015)	-0.012 (0.027)
Percentage of workers in technical jobs	-0.097 (0.073)	-0.127 (0.075)*	-0.056 (0.126)
Fiscal effort ratio	-5.047 (3.962)	-12.995 (4.013)***	7.729 (7.760)
Constant	-2.107 (1.460)	-1.760 (1.561)	-6.794 (2.611)**
County fixed effects	Included	Included	Included
Probability > F	0.000	0.000	0.000
Adjusted R <sup>2</sup>	0.707	0.700	0.522

Note: N = 354 cities. Cell entries are unstandardized regression coefficients, with robust standard errors in parentheses. In calculating the dependent variable in column 3, 1 unit is added to the number of permits before taking the natural logarithm because of the presence of cities with no multifamily units permitted. The sample consists of California cities that were incorporated by 1980, had a population between 2,500 and 1,000,000 as of 1990, and were not under review by CDHCD as of July 1994.

\* $p < 0.10$ . \*\* $p < 0.05$ . \*\*\* $p < 0.01$ .

column 1). The main finding of interest here is a null result. That is, there is no evidence of a detectable relationship between noncompliance and the increase in housing units across these cities. Instead, other factors better explain differences in the pace of housing development.

The best predictor of growth in housing units, not surprisingly, is the size of the city's population; this variable takes into account the scale differences across these varied jurisdictions. Another variable associated with total housing permits was the city's rate of growth in the 1980s. Within any given county, cities that grew quickly in the previous decade were the ones that tended to add to the housing stock quickly in the 1990s. Cities with an older

profile of units as of 1990 and those located in urbanized areas added fewer units, which might be anticipated given that such cities are likely to be more developed and have less vacant land. (Population density itself, however, has an insignificant coefficient.) Job-heavy cities added more units, since vibrant employment centers were no doubt attractive to home builders. In addition, the nonlinear relationship of housing growth with median household income is apparent (income positive, income squared negative, although only the latter cracks the 10 percent significance level). After accounting for these tendencies, housing element noncompliance provides no additional information about cities' rates of housing growth.

In most cities in California, single-family units clearly predominated during this period. In fact, in the average city, only 22.4 percent of the new units were multifamily.<sup>9</sup> Therefore, results from the model of single-family housing permits issued from 1994 to 2000 (table 2, column 2) are quite similar to those for total housing permits. In addition to the effects noted earlier, cities with high levels of fiscal effort issued significantly fewer single-family permits, perhaps indicating that fiscal stress dampens willingness to accommodate housing, which is viewed as fiscally burdensome in California (Fulton 1999). The nonlinear relationship between median income and housing growth is more clearly apparent in this model as well. Once again, non-compliance has a positive coefficient and lacks a significant relationship to housing growth.

As a fair share approach, housing element law in California is particularly attuned to encouraging affordable housing. Unfortunately, there is a lack of complete and comparable information across cities on the production of affordable units. (Some cities measure affordable housing production themselves but use different definitions of affordability.) Nevertheless, CIRB data can be used to examine multifamily housing production. Multifamily apartments and condominiums are likely to be the most affordable types of new housing, especially in the expensive land markets typical of much of California. Moreover, multifamily production was noted to be at a particularly low ebb in the state in the 1990s. "Whereas multifamily housing accounted for between 45 and 49 percent of total housing construction during the 1960s, 1970s, and 1980s, last decade it fell to 25 percent of the already depressed total" (Myers and Park 2002, 2).

<sup>9</sup>If data from all cities are aggregated, the share of multifamily units as a percentage of all new units was somewhat higher, at 27.7 percent, because cities that issued the greatest number of overall housing permits also tended to have greater shares of multifamily development.

Thus, the third column in table 2 examines the determinants of increases in multifamily housing. Although this regression accounts for somewhat less variation across cities than the previous two (52 percent), it is nevertheless clear that housing element noncompliance is not a significant correlate of multifamily permits (although at least the coefficient is negative). Larger cities and cities with more jobs per worker saw more multifamily development. Cities with an older housing stock in 1990 saw fewer multifamily units added from 1994 to 2000, and the nonlinear relationship of multifamily permits with median income is the same as it is for single-family units.

In short, a number of city characteristics very plausibly account for much of the variation in new housing permits. However, despite numerous other specifications of these models (not reported here), noncompliance with California's state housing element law was not one of them. Although compliance may well have some important benefits for local governments and residents, a sheer increase in residential production in this high-cost, supply-constrained state does not appear to be an outcome, at least in the 1990s.

## Concluding observations

### *Tempering state review with realism*

To answer the question posed in the title—Can state review of local planning increase housing production?—the answer, in the case of California, appears to be a qualified no. Or, to be more precise, that state's method for overseeing local housing elements did not appear to result in a faster pace of residential development among municipalities that were seen as meeting their planning requirements, at least for the mid- to late 1990s. Much scrutiny is given to housing element status, in part because the assumption is that noncompliant cities are those that artificially slow the growth of their housing stock. But the results reported here indicate that housing market and socioeconomic factors swamp the influence of compliance status in contributing to variations in growth. This is true of both single-family and multifamily development.

This finding (or lack of it) should not be read as a wholesale condemnation of the requirement that California cities and counties prepare housing plans and submit them for state review. A reasonable case can be made that this mandate improves local planning, since it requires local officials to remain cognizant of the region's broader needs for accommodating growth and shelter. The requirement for a periodic housing element update may potentially

mean that more attention is paid to housing needs, and thus more housing is built, on a *statewide basis*, even if the compliance status of specific cities cannot be connected to differences in new permits.

Furthermore, data limitations mean that one cannot test systematically for any relationship between compliance status and production of specifically *affordable* units, which receive special attention under the state law. Dodge (2002) undertook case studies of 40 localities in the San Francisco Bay area and found that compliant jurisdictions met a larger share of their low- and moderate-income goals than noncompliant jurisdictions, although she was forced to depend on local definitions of affordability and local reporting of the number of affordable units built.

It is perhaps not surprising that compliance seems to have no similar effects on the overall pace of residential development. A process-oriented planning approach, which originated largely from a concern with spatially distributing responsibilities for affordable or subsidized units, may have weak traction in influencing overall housing production. If increased production is the goal, it may be risky to use the perceived quality of the plan as a barometer of local success. One problem with relying on a prospective plan for housing production is that such a document does not necessarily bind future political actors. As Goetz, Chapple, and Lukermann (2003) note, “A housing plan adopted in one year is not necessarily embraced by the city council in subsequent years” (220).

A second potential problem is that by making a judgment about the adequacy of local planning efforts rather than evaluating (or rewarding) localities based on their track record of approvals, the California policy risks inflaming the resentment of officials whose cooperation is sought. As May and Burby (1996) write, “State and local governments have often been reluctant partners when intergovernmental arrangements take on coercive forms. Given their concerns, the challenge is to identify more palatable ways of securing compliance with national or state policy objectives” (173). They suggest that more attention be paid to the possibilities inherent in cooperative or capacity-building intergovernmental approaches in which states try to increase local interest and capacity in terms of a policy goal, treat localities as trustees rather than agents, focus on the intent of local actions, use technical or financial assistance as inducements, and allow wide local latitude in achieving goals. Particularly where substantive rather than procedural compliance is of most interest, Burby and Paterson (1993) suggest that cooperative approaches may

prove superior.<sup>10</sup> Nevertheless, such collaboration is a difficult endeavor; it “cannot be legislated or purchased” (Burby and May 1997, 150).

Beyond its intergovernmental arrangements, the housing element policy in California suffers from several common public policy pitfalls: It measures success primarily based on inputs (plans) rather than outputs (housing built), it is not well matched to a system of rewards or sanctions, and it has multiple and potentially conflicting goals. On the last count, it is reasonable to ask whether a fair share method is a suitable route to enhanced production. Such policies may do an excellent job of deconcentrating subsidized or affordable units, without necessarily affecting overall supply (and, thus, more macro measures of affordability). A perhaps flawed analogy is that affirmative action policies may well be an effective way of promoting diversity in the workplace, but are not a direct mechanism to stimulate job creation per se.

#### *Other potential policy approaches*

Policy makers concerned about housing production and local constraints on housing may wish to consider other potential approaches.<sup>11</sup> One would be to place more emphasis on direct incentives or rewards for housing production (affordable or otherwise). For example, states could redesign the system of financing local governments to provide more funds to localities that increase their population or housing unit count. Providing direct fiscal rewards for the production of housing (or for affordable units, transit-oriented units, and so on) would be one method, but states must also deal with broader elements of local public finance that make commercial development seem more fiscally beneficial than housing (Bollens 1994).

In California, for example, the important role of local sales tax revenues in local budgets is seen as encouraging retail development at the expense of residential growth (Fulton 1999; Lewis 2001). In other states, differential

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<sup>10</sup> At the same time, they suggest that in situations where local governments are antithetical or uninterested in the state goal, clear punishments (with a high certainty of application) are key. In this manner, too, the California policy, which relies for enforcement largely on lawsuits by nonprofit builders and public interest law firms against noncompliant localities, can be found wanting.

<sup>11</sup> While sympathetic to their goals, Stonefield (2001) provides a general critique of state-override policies from a legal standpoint, arguing that “the override tool is weak in operation because it is indirect, non-directive, and non-financial” (341). He suggests that a more effective route for states would be to direct all or some local governments to adopt inclusionary housing policies (or face a cutoff of certain state aid), to create a demand-side Moving to Opportunity-type program, or simply to build affordable housing themselves.

assessment of businesses and residences for property taxes may similarly provide a heavier inducement for commercial rather than residential development.

An alternative and potentially complementary approach is to penalize poor performance in providing housing. In assessing penalties, however, state policy makers must be cognizant of some limitations that can make it difficult for even the most well-intentioned governments to show dramatic results. Namely, a lack of funds to subsidize affordable units, very high land prices, a lack of vacant land, or an economic recession may hinder production for reasons beyond the control of local governments. A penalty approach should perhaps rest instead on comparing local production or residential permitting decisions with averages for similarly situated jurisdictions in the same state or metropolitan area.

Another approach along these general lines would be to allow residential builders who were denied local permits for reasons they consider invalid to appeal the decision to a state appeals board, as they do in Massachusetts. Other aspects of the 40B law seem perhaps overly restrictive: for example, the requirement that only nonprofit builders qualify for expedited review and that 40B projects must be at least 25 percent affordable.

The final step in this continuum from rewards for production to penalties for nonproduction to overrides of local decisions would be state preemption of certain local land use powers. This is the approach taken in the Portland (OR) area, where the state has limited local discretion over residential zoning by setting minimum densities for new housing and prescribing a minimum 50/50 mix of attached and detached units. Although such an approach would be more difficult in states with a stronger tradition of home rule and local autonomy, it is worth considering for adherents of planning reform. By setting clear standards, Oregon's policy seems a much more direct way to shift the emphasis and regulatory framework of local plans than the somewhat convoluted California approach.

#### *Considerations for future research*

Before embracing any approach, however, reformers should realize that no research has yet definitively untangled the differential effects of varying state review programs on local housing production. Such cross-state comparisons have been stymied by the data limitations and methodological issues alluded to earlier. Nevertheless, with the introduction of an adequate set of controls, a clever research design may yet sort out the systematic relationship (if any) between state review systems and rates of housing production across localities in several states, including those with prospective, retrospective, coercive, and

collaborative approaches to local plan makers. Such an investigation could also examine differences in the mix of local housing produced (e.g., the percentage of units in multifamily projects), thus returning the analysis to some of the fair share considerations that initially motivated the passage of state review programs. Well-designed state review systems may be able to break the “chain of exclusion” caused by local land use regulation in some states (Pendall 2000). Analysts concerned with the spread of suburban sprawl might also examine which state review systems are best able to promote healthy levels of housing production without experiencing excessively decentralized development.

Such a research agenda presents a variety of challenges in data collection, measurement, and conceptualization and may require a multistate team of investigators to sort out the local nuances of housing markets and implementation of state mandates. But as Burby and May’s (1997) study of state natural hazard mandates illustrates, it is possible through careful cross-state comparative work to build a body of knowledge that can help policy makers design more productive and efficacious intergovernmental planning relationships.

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